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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,636	07/24/2001	Elliot Schwartz	05168.P002	6340

40418 7590 08/12/2005

HEIMLICH LAW  
5952 DIAL WAY.  
SAN JOSE, CA 95129

EXAMINER
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VU, THONG H

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/912,636

**Applicant(s)**

SCHWARTZ, ELLIOT

**Examiner**

Thong H. Vu

**Art Unit**

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-27 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/02.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

1. Claims 1-27 are pending.

***Response to Arguments***

2. Applicant's arguments filed 7/31/05 with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2,10-11,19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noy [6,795,851 B1] in view of Jacob et al [Jacob, 6,236,999 B1].

3. As per claim 1, Noy discloses a computer network architecture comprising:

a first layer including a transmission control protocol connection( TCP); a second layer including a hyper text transfer protocol connection (HTTP) built upon the first layer [Noy, TCP based channel, multi HTTP transaction channel, col 44-55];

a first tunneling layer including a first tunneling protocol built upon the second layer to tunnel a message through the hyper text transfer protocol connection; [Noy, Multi HTTP request/response channels tunneled over individual TCP connections, TCP based and tunneled, multi-part channels, col 8 lines 45-60].

However Noy does not explicitly detail "a multiplexing layer to multiplex a plurality of messages for transmission through the first tunneling layer"

Jacob disclosed the messages can be transferring using different protocols: TCP/IP , HTTP tunneling and multiplexes the threads between socket reading and request execution, col 8 lines 40-62]

Therefore it would have been obvious to an ordinary skill in the art at the time the invention was made to incorporate the technique of multiplex messages threads through the tunneling as taught by Jacob into the Noy's apparatus in order to utilize the tunneling process. Doing so would provide a more efficient mechanism by automatic detected and selected optimal protocol to establish a communication channel with the server process [Noy, col 2 lines 5-10].

4. As per claim 2, Noy discloses the first tunneling protocol (i.e.: TCP) opens the HTTP connection between a server and a client [Noy, col.8 lines 45-60].

5. Claims 10-11,19-20 contain the similar limitations set forth of apparatus claims 1-2. Therefore, claims 10-11,19-20 are rejected for the similar rationale set forth in claims 1-2.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-9,12-18,21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noy [6,795,851 B1] in view of Jacob et al [Jacob, 6,236,999 B1] and further in view of Pujare et al [Pujare, 2002,0083181 A1].

6. As per claim 3, Noy discloses a first layer (TCP) tunneling through a second layer (HTTP). However Noy does not detail "a second tunneling layer including a second tunneling protocol built upon the first layer to tunnel a message through the TCP connection."

In the same endeavor, Puraje discloses a conventionally coded application conversion system wherein the component that does the network spoofing is the TCP – HTTP converter including TCP packets tunnel through HTTP on one side and do exactly the opposite on the other [Pujare, 0156]

Therefore it would have been obvious to an ordinary skill in the art at the time the invention was made to incorporate the Pujare teaching into the Noy's apparatus in order to utilize the channel construction mechanism. Doing so would provide a conventionally coded application conversion for streamed delivery and execution which does not require the recompiled [Pujare,0014].

7. As per claim 4, Noy-Pujare disclose the second tunneling protocol is used to open the TCP connection between the server and the client [Pujare, 0156].

8. As per claim 5, Noy-Pujare disclose tunneling protocol opens the HTTP connection if the second tunneling protocol is not successful in opening the TCP connection [Pujare, 0156].

9. As per claim 6, Noy-Pujare disclose the messages include binary format [Pujare, binary, 562].

10. As per claim 7, Noy-Pujare disclose the plurality of messages includes a plurality of operational messages and a plurality of administrative messages [Noy, operation and administrators, col 1 lines 54-67].

11. As per claim 8, Noy-Pujare disclose the operational messages include operational data [Pujare, parameter, 0295].

12. As per claim 9, Noy-Pujare disclose the administrative messages can be selected from the group consisting of debug messages, firmware update messages and parameter configuration messages [Pujare, update, 0019; parameter, 295].

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Thong Vu*, whose telephone number is (571)-272-3904. The examiner can normally be reached on Monday-Thursday from 7:00AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Andrew Caldwell*, can be reached at (571) 272-3868. The fax number for the organization where this application or proceeding is assigned is 571-273-8300

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Thong Vu*  
*Patent Examiner*  
*Art Unit 2142*

A handwritten signature in black ink, appearing to read 'Thong', with a horizontal line underneath.